

ASSEMBLY BILL

No. 2303

Introduced by Committee on Insurance (Solorio (Chair), Bradford, Carter, Feuer, Hayashi, Torres, and Wieckowski)

February 24, 2012

An act to amend Sections 100, 661, 700.04, 923.6, 985, 1011, 1012, 1016, 1022, 1061, 1063, 1070.6, 1851, 1864, 12100, and 12962 of, to add Section 1011.1 to, to repeal Sections 117 and 12961 of, and to repeal Chapter 2 (commencing with Section 12420) of Part 6 of Division 2 of, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2303, as introduced, Committee on Insurance. Insurance omnibus.

(1) Existing law regulates mortgage insurance and defines it as including guaranteeing of the payment of the principal, interest, and other sums agreed to be paid under the terms of any note or bond secured by mortgage, or other sums secured under the terms of the mortgage, in its entirety, or of any undivided or other partial interest in the mortgage, or in a group of mortgages, and the guaranteeing or insuring, directly or indirectly, against loss thereon.

This bill would prohibit mortgage insurance from being an insurance product that may be offered in this state.

(2) Existing law requires the Insurance Commissioner to publish notices of insurer liquidation in a newspaper of general circulation, published in the county in which the proceeding is pending, and in the Counties of Alameda, Los Angeles, Sacramento, San Diego, San Francisco, and Santa Clara, not less than once a week for 4 successive weeks.

This bill would delete the requirement of publication in certain cities and counties for the required period of time, and instead would require only publication in geographic areas pertinent to the liquidation and that the publication reference a source, either the liquidated company's or the liquidator's Internet Web site, where ongoing information for creditors would be provided.

Existing law authorizes the commissioner to apply by verified application for an order for the liquidation of a domestic corporation in the insurance business.

This bill would incorporate the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 by authorizing the Federal Deposit Insurance Corporation to stand in the place of the commissioner and file a verified application in state court to place the insurer into liquidation under the laws and requirements of the state.

(3) Existing law requires that on or before May 1 of each year, insurers, engaged in writing child care liability insurance coverage, submit a report to the commissioner of their operations regarding child care liability claims experience for the preceding calendar year ending on December 31 on a form furnished by the commissioner. The commissioner is required to annually report to the Governor, Legislature, and to the Assembly and Senate Committees on Insurance regarding certain court actions, such as medical malpractice, and child care liability claims.

This bill would delete the requirement of that the insurer child care liability claims experience report for the preceding calendar year ending on December 31 be submitted to the commissioner on or before May 1 of each year, and would instead require that the report for the preceding calendar year be submitted at the request of the commissioner, but not more than annually, on a form prescribed by the commissioner. The bill would also delete the commissioner's reports to the Governor, Legislature, and to the Assembly and Senate Committees on Insurance described above.

(4) The bill would also make conforming changes and delete obsolete provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 100 of the Insurance Code is amended to read:

100. Insurance in this state is divided into the following classes:

- (1) Life
- (2) Fire
- (3) Marine
- (4) Title
- (5) Surety
- (6) Disability
- (7) Plate glass
- (8) Liability
- (9) Workmen's compensation
- (10) Common carrier liability
- (11) Boiler and machinery
- (12) Burglary
- (13) Credit
- (14) Sprinkler
- (15) Team and vehicle
- (16) Automobile
- (17) ~~Mortgage~~[Reserved]
- (18) Aircraft
- (19) Mortgage guaranty
- (19.5) Insolvency
- (19.6) Legal insurance
- (20) Miscellaneous

SEC. 2. Section 117 of the Insurance Code is repealed.

~~117. Mortgage insurance includes the guaranteeing of the payment of the principal, interest and other sums agreed to be paid under the terms of any note or bond secured by mortgage, or other sums secured under the terms of any such mortgage, in its entirety, or of any undivided or other partial interest in any such mortgage, or in a group of such mortgages, and the guaranteeing or insuring, directly or indirectly, against loss thereon.~~

SEC. 3. Section 661 of the Insurance Code is amended to read:

661. (a) A notice of cancellation of a policy shall be effective only if it is based on one or more of the following reasons:

- (1) Nonpayment of premium.

(2) The driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date.

(3) Discovery of fraud by the named insured in pursuing a claim under the policy provided the insurer does not rescind the policy.

(4) Discovery of material misrepresentation of any of the following information concerning the named insured or any resident of the same household who customarily operates an automobile insured under the policy:

(A) Safety record.

(B) Annual miles driven in prior years.

(C) Number of years of driving experience.

(D) Record of prior automobile insurance claims, if any.

(E) Any other factor found by the commissioner to have a substantial relationship to the risk of loss.

Any insured who negligently misrepresents information described in this paragraph may avoid cancellation by furnishing corrected information to the insurer within 20 days after receiving notice of cancellation and agreeing to pay any difference in premium for the policy period in which the information remained undisclosed.

(5) A substantial increase in the hazard insured against.

~~(b) This section shall not apply to any policy or coverage that has been in effect less than 60 days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy.~~

~~(e)~~

(b) Modification of automobile physical damage coverage by the inclusion of a deductible not exceeding one hundred dollars (\$100) shall not be deemed a cancellation of the coverage or of the policy.

~~(d)~~

(c) This section shall not apply to nonrenewal.

SEC. 4. Section 700.04 of the Insurance Code is amended to read:

700.04. Paid-in capital for life insurers is governed by Section 10510 of this code; for title insurers by Section 12359; for

1 ~~mortgage insurers by Section 12440~~; and for mortgage guaranty
2 insurers by Section 12640.03.

3 SEC. 5. Section 923.6 of the Insurance Code is amended to
4 read:

5 923.6. (a) Every admitted property and casualty insurer, unless
6 otherwise exempted by the domiciliary commissioner, shall
7 annually submit the opinion of an Appointed Actuary entitled
8 “Statement of Actuarial Opinion.” This opinion shall be filed in
9 accordance with the appropriate Property and Casualty Annual
10 Statement Instructions of the National Association of Insurance
11 Commissioners (NAIC).

12 (1) For purposes of this section, the term, “property and casualty
13 insurer” means any admitted insurer writing insurance as described
14 in Section 102, 103, 105, 107, 108, 109, 110, 111, 112, 113, 114,
15 115, 116, ~~117~~, 118, 119, 119.6, 120, 124, or 124.5.

16 (2) For purposes of this section, the following terms have the
17 same meaning as used in the Property and Casualty Annual
18 Statement Instructions of the NAIC:

19 (A) Actuarial Opinion.

20 (B) Actuarial Opinion Summary.

21 (C) Actuarial Report.

22 (D) Appointed Actuary.

23 (E) Statement of Actuarial Opinion.

24 (F) Property and Casualty Annual Statement Instructions.

25 (3) The commissioner may adopt regulations related to the terms
26 and conditions required by the Property and Casualty Annual
27 Statement Instructions of the NAIC.

28 (b) Every property and casualty insurer domiciled in this state
29 that is required to submit a Statement of Actuarial Opinion shall
30 annually submit an Actuarial Opinion Summary, written by the
31 insurer’s Appointed Actuary. This Actuarial Opinion Summary
32 shall be filed in accordance with the appropriate Property and
33 Casualty Annual Statement Instructions of the NAIC and shall be
34 considered as a document supporting the Actuarial Opinion
35 required in subdivision (a).

36 (c) An admitted insurer not domiciled in this state shall provide
37 the Actuarial Opinion Summary upon request of the commissioner.

38 (d) An Actuarial Report and underlying workpapers as required
39 by the appropriate Property and Casualty Annual Statement
40 Instructions of the NAIC shall be prepared to support each

1 Actuarial Opinion. If an insurer fails to provide either a supporting
2 Actuarial Report or workpapers at the request of the commissioner,
3 or if the commissioner determines that the supporting Actuarial
4 Report or workpapers provided by the insurer are otherwise
5 unacceptable to the commissioner, the commissioner may engage
6 a qualified actuary at the expense of the insurer to review the
7 opinion and the basis for the opinion and prepare the supporting
8 Actuarial Report or workpapers.

9 (e) Notwithstanding subdivision (d) of Section 6254 of the
10 Government Code, subdivision (f), or any other provision of law,
11 the Statement of Actuarial Opinion required by subdivision (a)
12 shall be a public record and open to inspection.

13 (f) (1) Documents, materials, or other information in the
14 possession or control of the commissioner that are considered an
15 Actuarial Report, workpapers, or Actuarial Opinion Summary
16 provided in support of the Statement of Actuarial Opinion, and
17 any other material provided by the insurer to the commissioner in
18 connection with the Actuarial Report, workpapers, or Actuarial
19 Opinion Summary shall be confidential by law and privileged,
20 shall not be made public by the commissioner or any other person
21 and are exempt from the California Public Records Act (Chapter
22 3.5 (commencing with Section 6250) of Division 7 of Title 1 of
23 the Government Code), shall not be subject to subpoena, and shall
24 not be subject to discovery or admissible in evidence in any civil
25 action brought by a private party.

26 (2) This subdivision shall not limit the commissioner's authority
27 to release the documents, materials, and other information
28 described in paragraph (1) to the American Academy of Actuaries'
29 Actuarial Board for Counseling and Discipline (ABCD), or its
30 successor, so long as those documents, materials, and other
31 information are required for the purpose of professional disciplinary
32 proceedings, and the ABCD establishes procedures satisfactory to
33 the commissioner for preserving the confidentiality of the
34 documents, nor shall this subdivision limit the commissioner's
35 authority to use those documents, materials, or other information
36 in furtherance of any regulatory or legal action brought as part of
37 the commissioner's official duties.

38 (3) The commissioner may also exercise, with respect to the
39 documents, materials, or other information described in paragraph

(1), all the authority specified in subdivision (b) of Section 735.5, or any successor provision.

SEC. 6. Section 985 of the Insurance Code is amended to read:

985. (a) On or after January 1, 1970, as used in this article and in *paragraph (9) of* subdivision—~~(i)~~ (a) of Section 1011, “insolvency” means either of the following:

(1) Any impairment of minimum “paid-in capital” or “capital paid in,” as defined in Section 36, required in the aggregate of an insurer by the provisions of this code for the class, or classes, of insurance that it transacts anywhere.

(2) An inability of the insurer to meet its financial obligations when they are due.

(b) On or after January 1, 1970, an insurer cannot escape the condition of insolvency by being able to provide for all its liabilities and for reinsurance of all outstanding risks. An insurer must also be possessed of additional assets equivalent to ~~such~~ *the* aggregate “paid-in capital” or “capital paid in” required by this code after making provision for all ~~such~~ *those* liabilities and for ~~such~~ *that* reinsurance.

(c) On or after October 1, 1967, as used in this code provision for reinsurance of all outstanding risks and “gross premiums without any deduction, received and receivable upon all unexpired risks” means the greater of: (1) the aggregate amount of actual unearned premiums, or (2) the amount reasonably estimated as being required to reinsure in a solvent admitted insurer the unexpired terms of the risks represented by all outstanding policies.

(d) On or after October 1, 1967, an insurer ~~must~~ *shall* make provision for reinsurance of the outstanding risk on policies that provide premiums are fully earned at inception and on policies that for any other reason do not provide for a return premium to the insured on cancellation prior to expiration.

(e) On or after October 1, 1967, the commissioner shall prescribe standards for reasonably estimating the amount required to reinsure that will provide adequate safeguards for the policyholders, creditors, and the public.

(f) On or after October 1, 1967, this section shall not be applicable to life, title, mortgage, or mortgage guaranty insurers.

(g) In the application of this section to disability insurance, as defined in Section 106, reserves for unearned premiums and amounts reasonably estimated as required to reinsure outstanding

1 risks shall be determined in accordance with the provisions of
2 Section 997.

3 SEC. 7. Section 1011 of the Insurance Code is amended to
4 read:

5 1011. (a) The superior court of the county in which the
6 principal office of a person described in Section 1010 is located
7 ~~shall~~, upon the filing by the commissioner of the verified
8 application showing any of the ~~following~~ conditions ~~hereinafter~~
9 ~~enumerated to in this subdivision exist, or a filing by the Federal~~
10 *Deposit Insurance Corporation of the verified application showing*
11 *that the conditions enumerated in subdivision (b) exist and the*
12 *conditions set forth in Section 5383(e)(3) of Title 12 of the United*
13 *States Code having been satisfied, shall issue its order vesting title*
14 *to all of the assets of that person, wheresoever situated, in the*
15 *commissioner or his or her successor in office, in his or her official*
16 *capacity as such, and direct the commissioner forthwith to take*
17 *possession of all of its books, records, property, real and personal,*
18 *and assets, and to conduct, as conservator, the business of said the*
19 *person, or so much thereof as to the commissioner may seem*
20 *appropriate, and enjoining said the person and its officers, directors,*
21 *agents, servants, and employees from the transaction of its business*
22 *or disposition of its property until the any of the following further*
23 *order of said the court:*

24 (a)

25 (1) That ~~such~~ *the* person has refused to submit its books, papers,
26 accounts, or affairs to the reasonable inspection of the
27 commissioner or his or her deputy or examiner.

28 (b)

29 (2) That ~~such~~ *the* person has neglected or refused to observe an
30 order of the commissioner to make good within the time prescribed
31 by law any deficiency in its capital if it is a stock corporation, or
32 in its reserve if it is a mutual insurer.

33 (c)

34 (3) That ~~such~~ *the* person, without first obtaining the consent in
35 writing of the commissioner, has transferred, or attempted to
36 transfer, substantially its entire property or business or, without
37 ~~such~~ consent, has entered into any transaction the effect of which
38 is to merge, consolidate, or reinsure substantially its entire property
39 or business in or with the property or business of any other person.

40 (d)

1 (4) That ~~such~~ *the* person is found, after an examination, to be
2 in such condition that its further transaction of business will be
3 hazardous to its policyholders, or creditors, or to the public.

4 ~~(e)~~

5 (5) That ~~such~~ *the* person has violated its charter or any law of
6 the state.

7 ~~(f)~~

8 (6) That any officer of ~~such~~ *the* person refuses to be examined
9 under oath, touching its affairs.

10 ~~(g)~~

11 (7) That any officer or attorney in fact of ~~such~~ *the* person has
12 embezzled, sequestered, or wrongfully diverted any of the assets
13 of ~~such~~ *the* person.

14 ~~(h)~~

15 (8) That a domestic insurer does not comply with the
16 requirements for the issuance to it of a certificate of authority, or
17 that its certificate of authority has been revoked; ~~or~~.

18 ~~(i)~~

19 (9) That the last report of examination of any person to whom
20 the provisions of this article apply shows ~~such~~ *the* person to be
21 insolvent within the meaning of Article 13 (commencing with
22 Section 980), Chapter 1, Part 2, Division 1; or if a reciprocal or
23 interinsurance exchange, within the applicable provisions of
24 Section 1370.2, 1370.4, 1371, or 1372; or if a life insurer, within
25 the applicable provisions of Sections 10510 and 10511.

26 *(b) Notification is given by the United States Secretary of the*
27 *Treasury that a determination has been made by the secretary, in*
28 *accordance with and satisfying the provisions of Section 5383(b)*
29 *of Title 12 of the United States Code, as to a person described in*
30 *Section 1010 that is an insurance company as defined in Section*
31 *5381(a)(13) of Title 12 of the United States Code, and one of the*
32 *following:*

33 *(1) The board of directors, or body performing similar functions,*
34 *of the person acquiesces or consents to the appointment of a*
35 *receiver as provided for in Section 5832(a)(1)(A)(i) of Title 12 of*
36 *the United States Code, with that consent to be considered to be*
37 *consent to issuance of an order under this section.*

38 *(2) The United States District Court for the District of Columbia*
39 *issued an order for the appointment of a receiver of the person as*
40 *provided for in Section 5382(a)(1)(A)(iv)(I) of Title 12 of the United*

1 *States Code, without regard to whether an appeal of the order is*
2 *pending.*

3 (3) *A petition by the United States Secretary of the Treasury for*
4 *appointment of a receiver was made to the United States District*
5 *Court for the District of Columbia and was granted by operation*
6 *of the law as provided for in Section 5382(a)(1)(A)(v) of Title 12*
7 *of the United States Code, without regard to whether an appeal*
8 *of the order is pending.*

9 SEC. 8. Section 1011.1 is added to the Insurance Code, to read:

10 1011.1. If a verified application is filed pursuant to Section
11 1011 that shows that the conditions set forth in subdivision (b) of
12 Section 1011 exist and upon a showing that notice was provided
13 to the person that is the subject of the verification application, all
14 of the following apply:

15 (a) A superior court hearing shall be held in which the person
16 may oppose the verified application solely on the grounds that the
17 conditions set forth in subdivision (b) of Section 1101 do not exist.
18 The hearing shall be completed within 24 hours after the verified
19 application is filed with the court.

20 (b) The superior court shall issue an order as provided for in
21 Section 1011 within 24-hours after the verified application was
22 filed with the court.

23 (c) If the superior court does not issue an order within 24 hours
24 as provided for in subdivision (b), then an order described in
25 subdivision (a) of Section 1011 shall be deemed granted by
26 operation of law upon expiration of the 24-hour period, without
27 further notice.

28 (d) An order entered by the superior court pursuant to
29 subdivision (b) or entered by operation of law pursuant to
30 subdivision (c) shall not be subject to any stay or injunction
31 pending appeal.

32 SEC. 9. Section 1012 of the Insurance Code is amended to
33 read:

34 1012. ~~Said~~ *Except in the case of an order issued based on a*
35 *verified application showing the conditions in subdivision (b) of*
36 *Section 1011 to exist, the order shall continue in force and effect*
37 *until, on the application either of the commissioner or of such that*
38 *person, it shall, after a full hearing, appear to said the court that*
39 *the ground for said the order directing the commissioner to take*
40 *title and possession does not exist or has been removed and that*

1 ~~said~~ *the* person can properly resume title and possession of its
2 property and the conduct of its business.

3 SEC. 10. Section 1016 of the Insurance Code is amended to
4 read:

5 1016. (a) If at any time after the issuance of an order under
6 ~~section~~ *Section 1011*, or if at the time of instituting any proceeding
7 under this article, *including under Section 1011*, it shall appear to
8 the commissioner that it would be futile to proceed as conservator
9 with the conduct of the business of ~~such that~~ *that* person, *he or she*
10 may apply to the court for an order to liquidate and wind up the
11 business of ~~said the~~ *that* person. Upon a full hearing of ~~such that~~
12 application, the court may make an order directing the winding up
13 and liquidation of the business of ~~such that~~ *that* person by the
14 commissioner, as liquidator, for the purpose of carrying out the
15 order to liquidate and wind up the business of ~~such that~~ *that* person.

16 (b) *Notwithstanding subdivision (a), the court may issue an*
17 *order to liquidate and wind up the business of a person as to whom*
18 *a verified application is filed pursuant to subdivision (b) of Section*
19 *1011 based solely on the verified application and hearing as*
20 *provided for in subdivision (a) of Section 1011.1, without further*
21 *hearing, or may issue an order to liquidate and wind up the*
22 *business of the person upon application by the commissioner after*
23 *the issuance of an order under Section 1011. The court's order*
24 *may direct the winding up and liquidation of the business of the*
25 *person by the commissioner, as liquidator, for the purpose of*
26 *carrying out the order to liquidate and wind up the business of the*
27 *person.*

28 SEC. 11. Section 1022 of the Insurance Code is amended to
29 read:

30 1022. ~~Such~~ *The* notice shall be published in ~~a newspaper~~
31 ~~newspapers~~ *of general circulation, published in the county in which*
32 ~~the proceeding is pending, and in the Counties of Alameda, Los~~
33 ~~Angeles, Sacramento, San Diego, San Francisco, and Santa Clara,~~
34 ~~not less than once a week for four successive weeks in geographic~~
35 ~~areas pertinent to the liquidation. The notice shall reference a~~
36 ~~source, either the liquidated company's or the liquidator's Internet~~
37 ~~Web site, where ongoing information for creditors shall be~~
38 ~~provided.~~ A copy of the notice, accompanied by an affidavit of
39 due publication, including a statement of the date of ~~first~~
40 publication, shall be filed with the clerk of the court.

SEC. 12. Section 1061 of the Insurance Code is amended to read:

1061. In verification of the matters set forth in Section 1060 of this code, the Department of Finance shall, at least every two years or more often if requested by the commissioner, examine the commissioner's books and accounts relating to all proceedings under this article ~~and Article 8 (commencing with Section 12550); Chapter 2, Part 6, Division 2 of this code,~~ and shall file a report of each ~~such~~ examination with the court in which the respective proceeding is pending and shall furnish the commissioner a certified copy of each ~~such~~ report. The expense of examining the books and accounts of the commissioner as conservator or liquidator under this article ~~or under Article 8 (commencing with Section 12550); Chapter 2, Part 6 of Division 2 of this code~~ shall be paid out of the support appropriation for the Department of Insurance current at the date of billing for ~~such~~ *the* expense and shall, upon order of the court or courts before which the proceedings under ~~said~~ *the* articles are pending, be ratably reimbursed to ~~such~~ *that* appropriation out of the assets of the estates administered by the commissioner as conservator or liquidator under this article ~~or under Article 8 (commencing with Section 12550); Chapter 2, Part 6 of Division 2 of this code.~~

SEC. 13. Section 1063 of the Insurance Code is amended to read:

1063. (a) Within 60 days after the original effective date of this article, all insurers, including reciprocal insurers, admitted to transact insurance in this state of any or all of the following classes only in accordance with the provisions of Chapter 1 (commencing with Section 100) of Part 1 of this division: fire (see Section 102), marine (see Section 103), plate glass (see Section 107), liability (see Section 108), workers' compensation (see Section 109), common carrier liability (see Section 110), boiler and machinery (see Section 111), burglary (see Section 112), sprinkler (see Section 114), team and vehicle (see Section 115), automobile (see Section 116), aircraft (see Section 118), and miscellaneous (see Section 120), shall establish the California Insurance Guarantee Association (the association); provided, however, this article shall not apply to the following classes or kinds of insurance: life and annuity (see Section 101), title (see Section 104), fidelity or surety including fidelity or surety bonds, or any other bonding obligations (see

1 Section 105), disability or health (see Section 106), credit (see
2 Section 113), ~~mortgage (see Section 117)~~, mortgage guaranty,
3 insolvency or legal (see Section 119), financial guaranty or other
4 forms of insurance offering protection against investment risks
5 (see Section 124), the ocean marine portion of any marine insurance
6 or ocean marine coverage under any insurance policy including
7 the following: the Jones Act (46 U.S.C. Sec. 688), the Longshore
8 and Harbor Workers' Compensation Act (33 U.S.C. Sec. 901 et
9 seq.), or any other similar federal statutory enactment, or any
10 endorsement or policy affording protection and indemnity
11 coverage, or reinsurance as defined in Section 620, or fraternal
12 fire insurance written by associations organized and operating
13 under Sections 9080 to 9103, inclusive. Any insurer admitted to
14 transact only those classes or kinds of insurance excluded from
15 this article shall not be a member insurer of the association. Each
16 insurer admitted to transact a class of insurance included in this
17 article, including the State Compensation Insurance Fund, as a
18 condition of its authority to transact insurance in this state, shall
19 participate in the association whether established voluntarily or
20 by order of the commissioner after the elapse of 60 days following
21 the original effective date of this article in accordance with rules
22 to be established as provided in this article. It shall be the purpose
23 of the association to provide for each member insurer insolvency
24 insurance as defined in Section 119.5.

25 (b) The association shall be managed by a board of governors,
26 composed of nine member insurers, each of which shall be
27 appointed by the commissioner to serve initially for terms of one,
28 two, or three years and thereafter for three-year terms so that three
29 terms shall expire each year on December 31, and shall continue
30 in office until his or her successor shall be appointed and qualified.
31 At least five members of the board shall be domestic insurers. At
32 least three of the members shall be stock insurers, and at least three
33 shall be nonstock insurers. The nine members shall be
34 representative, as nearly as possible, of the classes of insurance
35 and of the kinds of insurers covered by this article. In case of a
36 vacancy for any reason on the board, the commissioner shall
37 appoint a member insurer to fill the unexpired term. In addition to
38 the nine member insurers, the membership of the board shall also
39 include one public member appointed by the President pro Tempore
40 of the Senate, one public member appointed by the Speaker of the

1 Assembly, one business member appointed by the commissioner,
2 and one labor member appointed by the commissioner.

3 (c) The association shall adopt a plan of operations, and any
4 amendments thereto, not inconsistent with the provisions of this
5 article, necessary to assure the fair, reasonable, and equitable
6 manner of administering the association, and to provide for other
7 matters as are necessary or advisable to implement the provisions
8 of this article. The plan of operations and any amendments thereto
9 shall be subject to prior written approval by the commissioner. All
10 members of the association shall adhere to the plan of operation.

11 (d) If for any reason the association fails to adopt a suitable plan
12 of operation within 90 days following the original effective date
13 of this article, or if at any time thereafter the association fails to
14 adopt suitable amendments to the plan of operation, the
15 commissioner shall after hearing adopt and promulgate reasonable
16 rules as are necessary or advisable to effectuate the provisions of
17 this chapter. These rules shall continue in force until modified by
18 the commissioner after hearing or superseded by a plan of
19 operation, adopted by the association and approved by the
20 commissioner.

21 (e) In accordance with its plan of operation, the association may
22 designate one or more of its members as a servicing facility, but
23 a member may decline this designation. Each servicing facility
24 shall be reimbursed by the association for all reasonable expenses
25 it incurs and for all payments it makes on behalf of the association.
26 Each servicing facility shall have authority to perform any
27 functions of the association that the board of governors lawfully
28 may delegate to it and to do so on behalf of and in the name of the
29 association. The designation of servicing facilities shall be subject
30 to the approval of the commissioner.

31 (f) The association shall have authority to borrow funds when
32 necessary to effectuate the provisions of this article, and may
33 provide in its plan of operations for any of the following:

34 (1) The issuance of notes, bonds, or debentures, or the
35 establishment of a special purpose trust or other entity, solely for
36 the purpose of facilitating a financing.

37 (2) The securing of that borrowing or those notes, bonds, or
38 debentures by pledging or granting liens or mortgages, or by
39 otherwise encumbering its real or personal property, including,
40 but not limited to, premiums levied under Section 1063.5.

1 (g) The association, either in its own name or through servicing
2 facilities, may be sued and may use the courts to assert or defend
3 any rights the association may have by virtue of this article as
4 reasonably necessary to fully effectuate the provisions thereof.

5 (h) The association shall have the right to intervene as a party
6 in any proceeding instituted pursuant to Section 1016 wherein
7 liquidation of a member insurer as defined in Section 1063.1 is
8 sought.

9 (i) (1) The association shall have an annual audit of its financial
10 condition conducted by an independent certified public accountant.
11 The audit shall be conducted, to the extent possible, in accordance
12 with generally accepted auditing standards (GAAS) and the report
13 of the audit shall be submitted to the commissioner.

14 (2) The association shall annually audit at least one-third of the
15 service companies retained by the association to adjust claims of
16 insolvent insurers. The audits shall (A) assure that all covered
17 claims are being investigated, adjusted, and paid in accordance
18 with customary industry standards and practices and all applicable
19 statutes, rules and regulations, and (B) examine the management
20 and supervisory systems overseeing the claims functions. The
21 audits shall be conducted by the association or an independent
22 auditor, provided that the three largest service companies, as
23 measured by the number of claims processed for the association
24 during the previous three fiscal years, shall be audited by an
25 independent auditor at least once every three years. The association
26 shall implement systems to retain independent auditing firms for
27 the purpose of this paragraph, provided that no one firm is
28 designated or utilized as an exclusive provider. Audits conducted
29 pursuant to this paragraph shall be submitted annually to the
30 commissioner for review.

31 (j) The commissioner shall examine the association to the same
32 extent as, and in accordance with, the requirements of Article 4
33 (commencing with Section ~~730~~ 729) of Chapter 1 of Part 2 of
34 Division ~~2~~, 1, which sets forth the examination requirements
35 applicable to admitted insurers. A copy of the examination report
36 shall be filed with the Chairpersons of the Senate and Assembly
37 Committees on Insurance no later than December 31 of the year
38 the report is completed.

39 SEC. 14. Section 1070.6 of the Insurance Code is amended to
40 read:

1070.6. The withdrawal procedure and fees prescribed by this article shall not be required of a nonsurviving admitted constituent to a merger or consolidation into another admitted insurer in accordance with the applicable statutes and the commissioner's prior written consent given pursuant to *paragraph (3) of subdivision (e) (a)* of Section 1011, provided the commissioner is satisfied by documents, authenticated so as to be admissible in evidence over objection, filed with him, that:

(a) ~~Such~~The constituent has discharged all of its liabilities to residents of this state in the manner provided by Section 1071.5;

(b) There will be an admitted insurer directly available to ~~such~~ the constituent's policyholders: (1) to obtain policy changes and endorsements, (2) to receive payment of premiums and refund unearned premiums, (3) to serve notice of claim, proof of loss, summons, process, and other papers, and (4) for purposes of suit;

(c) ~~Such~~The constituent shall timely file with the commissioner appropriate financial statements reporting its insurance business done in this state during the calendar year of the merger or consolidation and all appropriate tax returns required by law for ~~such~~ the period, and shall timely pay all taxes found to be due on account of ~~such~~ the business; and

(d) ~~Such~~The constituent has surrendered its current California certificate of authority to the commissioner for cancellation as of the effective date of the merger.

The withdrawal procedure and fees prescribed by this article shall not be required of an insurer ~~which~~ that has been liquidated by a final order of a court of record of this or any sister state provided a certified copy of ~~such~~ the order reciting the fact of liquidation and discharge of all obligations has been filed with the commissioner.

SEC. 15. Section 1851 of the Insurance Code is amended to read:

1851. The provisions of this chapter shall apply to all insurance on risks or on operations in this state, except:

(a) Reinsurance, other than joint reinsurance to the extent stated in Article 5 (*commencing with Section 1856*).

(b) Life insurance.

(c) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine,

1 insurance policies. Inland marine insurance shall be deemed to
2 include insurance now or hereafter defined by statute, or by
3 interpretation thereof, or if not so defined or interpreted, by ruling
4 of the commissioner or as established by general custom of the
5 business, as inland marine insurance.

6 (d) Title insurance.

7 (e) Disability insurance.

8 (f) Workers' compensation insurance and insurance of any
9 liability of employers for injuries to, or death of, employees arising
10 out of, and in the course of, employment when this insurance is
11 incidental to, and written in connection with, the workers'
12 compensation insurance issued to the same employer and covering
13 the same employer interests.

14 ~~(g) Mortgage insurance.~~

15 ~~(h)~~

16 (g) Insurance transacted by county mutual fire insurers or county
17 mutual fire reinsurers.

18 SEC. 16. Section 1864 of the Insurance Code is amended to
19 read:

20 1864. (a) ~~On or before May 1 of each year, commencing in~~
21 ~~1987, each~~ Each insurer engaged in writing child care liability
22 insurance coverage in this state shall submit to the commissioner
23 a report of its operations regarding child care liability claims
24 experience for the last preceding calendar year ~~ending on December~~
25 ~~31 on a form furnished at the request of the commissioner, but not~~
26 ~~more than annually, on a form prescribed by the commissioner.~~
27 Each report shall separately state the following information for
28 family day care homes, as defined in Section 1596.78 of the Health
29 and Safety Code, and licensed child care centers, as defined in
30 Section 1596.76 of the Health and Safety Code:

31 (1) Premiums earned.

32 (2) Premiums written.

33 (3) Number of claims.

34 (4) Number of new claims during the reporting period.

35 (5) Number of claims closed during the reporting period.

36 (6) Number of claims outstanding at the end of the reporting
37 period.

38 (7) Total losses incurred.

39 (8) Total losses incurred as a percentage of premiums earned.

1 (9) Total number of policies in force on the last day of the
2 reporting period.

3 (10) Total number of policies canceled.

4 (11) Total number of policies nonrenewed.

5 (12) Net underwriting gain or loss.

6 (13) Separate allocations of expenses for commissions, other
7 acquisition costs, general office expenses, taxes, licenses and fees,
8 and other expenses. The allocations required by this section shall
9 be made by dividing the company's total premiums earned for
10 child care liability insurance by its total premiums earned and
11 applying the ratio determined to the expenses reported in the
12 company's annual statement filed with the commissioner pursuant
13 to Section 900.

14 (b) The commissioner shall develop and issue reporting forms
15 to insurers at least 90 days prior to the due date of the reports
16 required pursuant to this section.

17 (c) The Legislature finds that it is in the public interest of the
18 policyholders of this state that insurers writing child care liability
19 insurance permit remittance of premiums to occur on an installment
20 basis.

21 (d) The information provided under this section pertaining to a
22 specified claim, insurance policy, or insurer shall be confidential
23 and shall only be revealed by the department on a nonspecific basis
24 as part of an aggregate report of claims or policies.

25 SEC. 17. Section 12100 of the Insurance Code is amended to
26 read:

27 12100. As used in this article:

28 (a) (1) "Financial guaranty insurance" means a surety bond, an
29 insurance policy or, when issued by an insurer, an indemnity
30 contract and any guarantee similar to the foregoing types, under
31 which loss is payable upon proof of occurrence of financial loss
32 to an insured claimant, obligee, or indemnitee as a result of any
33 of the following events:

34 (A) Failure of any obligor on or issuer of any debt instrument
35 or other monetary obligation (including equity securities guaranteed
36 under a surety bond, insurance policy, or indemnity contract) to
37 pay, when due to be paid by the obligor or scheduled at the time
38 insured to be received by the holder of the obligation, principal,
39 interest, premium, dividend, purchase price of or on the instrument
40 or obligation, or other monetary payment when the failure is the

1 result of financial default or insolvency, or, provided that the
2 payment source is investment grade, any other failure of that
3 payment source to make payment, regardless of whether the
4 obligation is incurred directly or as guarantor by or on behalf of
5 another obligor that has also defaulted.

6 (B) Changes in the levels of interest rates, whether short or long
7 term, or the differential in interest rates between various markets
8 or products.

9 (C) Changes in the rate of exchange of currency.

10 (D) Changes in the value of financial or commodity indices, or
11 price levels in general.

12 (E) Other events that the commissioner determines by order,
13 regulation, or written consent are substantially similar to any of
14 the foregoing.

15 (2) Notwithstanding paragraph (1), “financial guaranty
16 insurance” shall not include any of the following:

17 (A) Insurance of any loss resulting from any event described in
18 paragraph (1), if the loss is payable only upon the occurrence of
19 any of the following, as specified in a surety bond, insurance
20 policy, or indemnity contract:

21 (i) A fortuitous physical event.

22 (ii) A failure of or deficiency in the operation of equipment.

23 (iii) An inability to extract or recover a natural resource.

24 (B) Title insurance authorized by Section 104 and as permitted
25 to be written by title insurers pursuant to Chapter 1 (commencing
26 with Section 12340) of Part 6 of this division.

27 (C) Surety insurance as authorized by Section 105.

28 (D) Credit unemployment insurance, meaning insurance on a
29 debtor in connection with a specific loan or other credit transaction,
30 to provide payments to a creditor in the event of unemployment
31 of the debtor for the installments or other periodic payments
32 becoming due while a debtor is unemployed.

33 (E) Credit insurance authorized by Section 113.

34 (F) Guaranteed investment contracts and funding agreements
35 issued by life insurance companies ~~which~~ *that* provide that the life
36 insurer itself will make specified payments in exchange for specific
37 premiums or contributions.

38 ~~(G) Mortgage insurance authorized by Section 117 and as~~
39 ~~permitted to be written by mortgage insurers pursuant to Chapter~~
40 ~~2 (commencing with Section 12420) of Part 6 of this division.~~

1 ~~(H)~~

2 (G) Mortgage guaranty insurance authorized by Section 119
3 and as permitted to be written by a mortgage guaranty insurer
4 pursuant to Chapter 2A (commencing with Section 12640.01) of
5 Part 6 of this division.

6 ~~(I)~~

7 (H) Indemnity contracts or similar guarantees, to the extent that
8 they are not otherwise limited or proscribed by this article, in which
9 a life insurer does any of the following:

10 (i) Guarantees its obligations or indebtedness or the obligations
11 or indebtedness of a subsidiary (as defined in Section 1215) other
12 than a financial guaranty insurance corporation; provided that:

13 (I) To the extent that any ~~such~~ obligations or indebtedness are
14 backed by specific assets, those assets shall at all times be owned
15 by the life insurer or the subsidiary.

16 (II) In the case of the guarantee of the obligations or
17 indebtedness of the subsidiary that are not backed by specific assets
18 of the life insurer, the guarantee terminates once the subsidiary
19 ceases to be a subsidiary.

20 (ii) Guarantees obligations or indebtedness (including the
21 obligation to substitute assets where appropriate) with respect to
22 specific assets acquired by a life insurer in the course of normal
23 investment activities and not for the purpose of resale with credit
24 enhancement, or guarantees obligations or indebtedness acquired
25 by its subsidiary, provided that the assets acquired pursuant to this
26 clause have been either of the following:

27 (I) Acquired by a special purpose entity, whose sole purpose is
28 to acquire specific assets of the life insurer or the subsidiary and
29 issue securities or participation certificates backed by the assets.

30 (II) Sold to an independent third party.

31 (iii) Guarantees obligations or indebtedness of an employee or
32 agent of the life insurer.

33 ~~(J)~~

34 (I) Any cramdown bond or mortgage repurchase bond, as those
35 phrases are used by nationally recognized rating agencies in respect
36 of mortgage-backed securities.

37 ~~(K)~~

38 (J) Residual value insurance.

39 ~~(L)~~

1 (K) Any other form of insurance covering risks that the
2 commissioner determines by order, regulation, or written consent
3 to be substantially similar to any of the foregoing.

4 (b) "Affiliate" means a person that, directly or indirectly, owns
5 at least 10 but less than 50 percent of the financial guaranty
6 insurance corporation or that is at least 10 percent but less than 50
7 percent, directly or indirectly, owned by a financial guaranty
8 insurance corporation.

9 (c) "Asset-backed securities" means either of the following:

10 (1) Securities or other financial obligations of an issuer provided
11 that both of the following apply:

12 (A) The issuer is a special purpose corporation, trust, or other
13 entity, or, provided that the securities or other financial obligations
14 constitute an insurable risk, is a bank, trust company, or other
15 financial institution, deposits in which are insured by the Bank
16 Insurance Fund or the Savings Association Insurance Fund of the
17 Federal Deposit Insurance Corporation or any successors thereto.

18 (B) The securities or other financial obligations are related to
19 a pool of assets so that all of the following apply:

20 (i) The pool of assets has been conveyed, pledged, or otherwise
21 transferred to or is otherwise owned or acquired by the issuer.

22 (ii) The pool of assets backs the securities or other financial
23 obligations issued.

24 (iii) No asset in the pool, other than an asset directly payable
25 by, guaranteed by, or backed by the full faith and credit of the
26 United States government or that otherwise qualifies as collateral
27 under paragraph (1) or (2) of subdivision (e), has a value exceeding
28 20 percent of the aggregate value of the pool.

29 (2) A pool of credit default swaps or credit default swaps
30 referencing a pool of obligations, provided that each of the
31 following is true:

32 (A) The swap counterparty whose obligations are insured under
33 the credit default swap is a special purpose corporation, special
34 purpose trust, or other special purpose legal entity.

35 (B) No reference obligation in the pool, other than an obligation
36 directly payable by, guaranteed by, or backed by the full faith and
37 credit of the United States government, or that otherwise qualifies
38 as collateral under paragraph (2) of subdivision (e), has a notional
39 amount exceeding 10 percent of the pool's aggregate notional
40 amount.

(C) The insurer has the benefit of a deductible or other first loss credit protection against claims under its insurance policy.

(d) “Average annual debt service” means the amount of insured unpaid principal and interest on an obligation multiplied by the number of the insured obligations (assuming that each obligation represents a \$1,000 par value), divided by the amount equal to the aggregate life of all of those obligations. This definition, expressed as a formula in regard to bonds, is as follows:

$$\text{Average Annual Debt Service} = \frac{\text{Total Debt Service} \times \text{Number of Bonds}}{\text{Bond Years}}$$

$$\text{Total Debt Service} = \frac{\text{Insured Unpaid Principal} + \text{Interest}}{\text{Number of Bonds} = \frac{\text{Total Insured Principal}}{\$1,000}}$$

$$\text{Bond Years} = \text{Number of Bonds} \times \text{Term in Years}$$

Term in Years = Term to maturity based on scheduled amortization or, in the absence of a scheduled amortization in the case of asset-backed securities or other obligations lacking a scheduled amortization, expected amortization, in each case determined as of the date of issuance of the insurance policy based upon the amortization assumptions employed in pricing the insured obligations or otherwise used by the insurer to determine aggregate net liability.

(e) “Collateral” means any of the following:

(1) Cash.

(2) The cashflow from specific obligations ~~which~~ *that* are not callable and scheduled to be received based on expected prepayment speed on or prior to the date of scheduled debt service (including scheduled redemptions and prepayments) on the insured obligation, provided that any of the following is true, as applicable:

(A) The specific obligations are directly payable by, guaranteed by or backed by the full faith and credit of the United States government.

(B) In the case of insured obligations denominated or payable in a foreign currency as permitted under paragraph (3) of subdivision (b) of Section 12112, the specific obligations are directly payable by, guaranteed by, or backed by the full faith and credit of the foreign government or the central bank thereof.

1 (C) The specific obligations are insured by the same insurer that
2 insures the obligations being collateralized, and the cashflows from
3 the specific obligations are sufficient to cover the insured scheduled
4 payments on the obligations being collateralized.

5 (3) The market value of investment grade obligations, other
6 than obligations evidencing an interest in the project or projects
7 financed with the proceeds of the insured obligations.

8 (4) The face amount of each letter of credit that meets all of the
9 following criteria:

10 (A) Is irrevocable.

11 (B) Provides for payment under the letter of credit in lieu of or
12 as reimbursement to the insurer for payment required under a
13 financial guaranty insurance policy.

14 (C) Is issued, presentable, and payable either:

15 (i) At an office of the letter of credit issuer in the United States.

16 (ii) At an office of the letter of credit issuer located in the
17 jurisdiction in which the trustee or paying agent for the insured
18 obligation is located.

19 (D) Contains a statement that either:

20 (i) Identifies the financial guaranty insurance corporation, its
21 collateral agent, or any successor by operation of law, including
22 any liquidator, rehabilitator, receiver, or conservator, as the
23 beneficiary.

24 (ii) Identifies the trustee or the paying agent for the insured
25 obligation as the beneficiary.

26 (E) Contains a statement to the effect that the obligation of the
27 letter of credit issuer under the letter of credit is an individual
28 obligation of that issuer and is in no way contingent upon
29 reimbursement with respect thereto.

30 (F) Contains an issue date and an expiration date.

31 (G) Does either of the following:

32 (i) Has a term at least as long as the shorter of the term of the
33 insured obligation or the term of the financial guaranty insurance
34 policy.

35 (ii) Provides that the letter of credit shall not expire without 30
36 days prior written notice to the beneficiary and allows for drawing
37 under the letter of credit in the event that, prior to expiration, the
38 letter of credit is not renewed or extended or a substitute letter of
39 credit or alternate collateral meeting the requirements of
40 subdivision (e) is not provided.

1 (H) If the letter of credit is governed by the 1983 revision of
2 the Uniform Customs and Practice for Documentary Credits of
3 the International Chamber of Commerce (Publication 400 or 500),
4 or any successor revision approved by the commissioner, it shall
5 contain a provision for an extension of time, of not less than 30
6 days after resumption of business, to draw against the letter of
7 credit in the event that one or more of the occurrences described
8 in Article 19 of Publication 400 or 500 occurs.

9 (I) Is issued by a bank, trust company, or savings association
10 that meets all of the following criteria:

11 (i) Is organized and existing under the laws of the United States
12 or any state thereof or, in the case of a financial institution
13 organized under the laws of a foreign country, has a branch or
14 agency office licensed under the laws of the United States or any
15 state thereof and is domiciled in a member country of the
16 Organization of Economic Co-operation and Development having
17 a sovereign rating in one of the top two generic lettered rating
18 classifications by a securities rating agency acceptable to the
19 commissioner.

20 (ii) Has (or is the principal operating subsidiary of a financial
21 institution holding company that has) a long-term debt rating of
22 at least investment grade.

23 (iii) Is not a parent, subsidiary or affiliate of the trustee or paying
24 agent, if any, with respect to the insured obligation if that trustee
25 or paying agent is the named beneficiary of the letter of credit.

26 (5) The amount of credit protection available to the insurer (or
27 its nominee) under each credit default swap that satisfies each of
28 the following:

29 (A) May not be amended without the consent of the insurer and
30 may only be terminated in accordance with one of the following:

31 (i) At the option of the insurer.

32 (ii) At the option of the counterparty to the insurer (or its
33 nominee), if the credit default swap provides for the payment of
34 a termination amount equal to the replacement cost of the
35 terminated credit default swap determined with reference to
36 standard documentation of the International Swap and Derivatives
37 Association, Inc. or otherwise acceptable to the commissioner.

38 (iii) At the discretion of the commissioner acting as rehabilitator,
39 liquidator, or receiver of the insurer upon payment by or on behalf
40 of the insurer of any termination amount due from the insurer.

1 (B) Provides for payment under all instances in which payment
2 under a financial guaranty insurance policy is required, except that
3 payment under the credit default swap may be on a first loss, excess
4 of loss, or other nonpro-rata basis and may apply on an aggregate
5 basis to more than one policy.

6 (C) Is provided by one of the following:

7 (i) A counterparty whose obligations under the credit default
8 swap are insured by a financial guaranty insurance corporation
9 licensed under this article or guaranteed by a financial institution
10 referred to in clauses (ii) and (iii) of this subparagraph.

11 (ii) A financial institution satisfying the requirements of clauses
12 (i) to (iii), inclusive, of subparagraph (I) of paragraph (4), provided
13 that obligations of the financial institution on parity with its
14 obligations under the credit default swap are rated as investment
15 grade, and further provided that, if the financial institution is not
16 organized under, or acting through a branch or agency office
17 licensed under, the laws of the United States or any state thereof,
18 then the financial institution is required to collateralize the
19 replacement cost of the credit default swap in the event that it fails
20 to maintain the investment grade rating.

21 (iii) Any other financial institution that the commissioner
22 determines to be substantially similar to any specified in clause
23 (i) or (ii).

24 (iv) The requirements of this subparagraph shall not be construed
25 as authority for an insurer domiciled in the United States to issue
26 credit default swaps unless the insurer has explicit authority to
27 issue credit default swaps.

28 Collateral shall be deposited with or held by the financial
29 guaranty insurance corporation, held by a trustee or agent for the
30 benefit of the financial guaranty insurance corporation in trust or
31 to perfect a security interest, or held in trust pursuant to the bond
32 indenture or other trust arrangement by a trustee or custodian for
33 the benefit of holders of the insured obligations in the form of
34 funds for payment of insured obligations, sinking funds, or other
35 reserves ~~which~~ *that* may be used for the payment of insured
36 obligations, collateral agent fees and trustee fees, or reimbursement
37 of the financial guaranty insurance corporation on any obligation
38 insured by the corporation. ~~Any such~~ *The* trustee, custodian, or
39 agent shall be a bank, savings association, depository institution,
40 or other entity acceptable to the commissioner, the deposits of

1 which are insured by the Bank Insurance Fund or the Savings
2 Association Insurance Fund of the Federal Deposit Insurance
3 Corporation (or any successors thereto), or in the case of banking
4 organizations organized under the laws of a foreign country in
5 addition satisfies the requirements of clauses (i) and (ii) of
6 subparagraph (I) of paragraph (4) ~~of subdivision (e) of Section~~
7 ~~12100~~, and, in each case ~~which~~ *that* has a net worth of at least
8 twenty-five million dollars (\$25,000,000). ~~Any such~~ *The* trustee
9 or agent may also be an approved or qualified servicer or originator
10 of the kind of assets ~~which~~ *that* comprise the collateral ~~which~~ *that*
11 maintains in force at all times errors and omissions insurance
12 applicable to the trust or agency activities, including without
13 limitation, a servicer qualified under a federal or state insurance
14 or guaranty program to service loans or mortgage loans. The
15 commissioner may adopt regulations, bulletins, notices or orders
16 to limit the amount of collateral provided by obligations, letters
17 of credit, or credit default swaps, or to limit the amount of collateral
18 provided by any single issuer, bank, or counterparty as provided
19 for in this subdivision. The commissioner may also require
20 additional reporting as deemed necessary.

21 (f) “Commercial real estate” means income-producing real
22 property other than residential property consisting of less than five
23 units.

24 (g) “Contingency reserve” means an additional liability reserve
25 established to protect policyholders against the effects of adverse
26 economic cycles or other unforeseen circumstances.

27 (h) “Credit default swap” means an agreement referencing credit
28 derivative definitions published from time to time by the
29 International Swap and Derivatives Association, Inc., or otherwise
30 acceptable to the commissioner, pursuant to which a party agrees
31 to compensate another party in the event of a payment default by,
32 insolvency of, or other adverse credit event in respect of, an issuer
33 of a specified security or other obligation; provided that the
34 agreement does not constitute an insurance contract and the making
35 of the credit default swap does not constitute the transaction of
36 insurance.

37 (i) “Excess spread” means, with respect to any insured issue of
38 asset-backed securities, the excess of (A) the scheduled cashflow
39 on the underlying assets that is reasonably projected to be available,
40 over the term of the insured securities after payment of the expenses

1 associated with the insured issue, to make debt service payments
2 on the insured securities over (B) the scheduled debt service
3 requirements on the insured securities, provided that this excess
4 is held in the same manner as collateral is required to be held under
5 subdivision (e).

6 (j) “Financial guaranty insurance corporation” means an insurer
7 transacting financial guaranty insurance.

8 (k) “Governmental unit” means a state, territory, or possession
9 of the United States of America, the District of Columbia, the
10 country of Canada, a province of Canada, the United Kingdom, a
11 public authority of the United Kingdom, a member country of the
12 Organization for Economic Co-operation and Development having
13 a sovereign rating in one of the top two generic lettered rating
14 classifications by a securities rating agency acceptable to the
15 commissioner, a municipality, or a political subdivision of any of
16 the foregoing, or any public agency or instrumentality thereof.

17 (l) “Guarantees of consumer debt obligations” means insurance
18 policies indemnifying a purchaser or lender against loss or damage
19 resulting from defaults on a pool of debts owed for extensions of
20 credit (including in respect of installment purchase agreements
21 and leases) to individuals provided in the normal course of the
22 purchaser’s or lender’s business, provided that the pool meets the
23 requirements of paragraph (2) of subdivision (c) and that the pool
24 has been determined to be investment grade. Policies providing
25 that coverage shall contain a provision that all liability terminates
26 upon sale or transfer of the underlying obligation to any transferee
27 that is not an insured of the financial guaranty insurance
28 corporation under a similar policy.

29 (m) “Industrial development bond” means any security, or other
30 instrument under which a payment obligation is created, issued by
31 or on behalf of a governmental unit to finance a project serving a
32 private industrial, commercial, or manufacturing purpose and not
33 guaranteed by a governmental unit.

34 (n) “Insurable risk” means that the obligation on an uninsured
35 basis has been determined to be not less than investment grade.
36 With respect to asset-backed securities as defined in subdivision
37 (c), the determination shall be, based solely on the pool of assets
38 backing the insured obligation or securing the financial guaranty
39 insurance corporation, without consideration of the
40 creditworthiness of the issuer.

(o) “Investment grade” means that the obligation or parity obligation of the same issuer is rated in one of the top four generic lettered rating classifications by a securities rating agency acceptable to the commissioner, that the obligation or parity obligation of the same issuer, without regard to financial guaranty insurance, has been identified in writing by that rating agency as an insurable risk deemed to be of investment grade quality, or that the obligation or parity obligation of the same issuer has been determined to be investment grade (as indicated by a category 1 or 2 rating) by the Securities Valuation Office of the National Association of Insurance Commissioners.

(p) “Municipal bonds” means municipal obligation bonds and special revenue bonds.

(q) (1) “Municipal obligation bond” means any security, or other instrument, including a lease payable or guaranteed by the United States or another national government that qualifies as a governmental unit, or any agency, department, or instrumentality thereof, or by a state or an equivalent subdivision of another national government that qualifies as a governmental unit, but not a lease of any other governmental unit, under which a payment obligation is created, issued by or on behalf of a governmental unit or issued by a special purpose corporation, special purpose trust, or other special purpose legal entity to finance a project or undertaking serving a substantial public purpose, and ~~which~~ *that* is one or more of the following:

(A) Payable from tax revenues, but not tax allocations, within the jurisdiction of the governmental unit.

(B) Payable or guaranteed by the United States of America or another national government that qualifies as a governmental unit, or any agency, department, or instrumentality thereof, or by a housing agency of a state or an equivalent political subdivision of another national government that qualifies as a governmental unit.

(C) Payable from rates or charges (but not tolls) levied or collected in respect of a nonnuclear utility project, public transportation facility (other than an airport facility) or public higher education facility.

(D) With respect to lease obligations, payable from past, present, or future appropriations.

(2) Notwithstanding paragraph (1), obligations of a special purpose corporation, special purpose trust, or other special purpose

1 legal entity shall not be considered municipal obligation bonds
2 unless the obligations are investment grade at the time of issuance,
3 the obligations are payable from sources enumerated in
4 subparagraphs (A) to (D), inclusive, and the project being financed
5 or the tolls, tariffs, usage fees, or other similar rates or charges for
6 its use are subject to regulation or oversight by a governmental
7 entity.

8 (r) "Parent" means a person that, directly or indirectly, owns at
9 least 50 percent of a financial guaranty insurance corporation.

10 (s) "Reinsurance" means cessions qualifying for credit under
11 Section 12121.

12 (t) "Security" or "secured" means any of the following:

13 (1) A deposit at least equal to the full amount of the outstanding
14 principal of the insured obligation.

15 (2) Collateral, as defined by subdivision (e), at least equal to
16 the full amount of the outstanding principal of the insured
17 obligation or that has a market value or scheduled cashflow ~~which~~
18 *that* is equal to or greater than the scheduled debt service on the
19 insured obligation.

20 (3) Property, provided the financial guaranty insurance
21 corporation or the trustee has possession of evidence of the right,
22 title, or authority to claim or foreclose thereon or otherwise dispose
23 of the property for value, the scheduled cashflow from which, or
24 market value thereof, is at least equal to the scheduled debt service
25 on the insured obligation.

26 (u) "Special revenue bond" means any security or other
27 instrument under which a payment obligation is created, issued by
28 or on behalf of, or payable or guaranteed by, a governmental unit
29 to finance a project or undertaking serving a substantial public
30 purpose and not payable from the sources enumerated in
31 subdivision (q) or securities ~~which~~ *that* are substantially similar
32 to the foregoing issued by any of the following:

33 (1) A not-for-profit corporation.

34 (2) A special purpose corporation, special purpose trust or other
35 special purpose legal entity, provided that the obligations are
36 investment grade at the time of issuance, the obligations are not
37 payable from the sources enumerated in subparagraphs (A) to (D),
38 inclusive, of paragraph (1) of subdivision (q), and the project being
39 financed or the tolls, tariffs, usage fees, or other similar rates or

1 charges for its use are subject to regulation or oversight by a
2 governmental entity.

3 (v) “Subsidiary” means a person that, directly or indirectly, is
4 at least 50 percent owned by a financial guaranty insurance
5 corporation.

6 (w) “Total net liability” of a financial guaranty insurance
7 corporation means the aggregate amount of insured unpaid
8 principal, interest, and other monetary payments, if any, of
9 guaranteed obligations insured or assumed, less reinsurance and
10 less collateral.

11 (x) “Utility first mortgage obligation” means an obligation of
12 an issuer secured by a first priority mortgage on property owned
13 or leased by an investor-owned or cooperative-owned utility
14 company and located in the United States, Canada, or a member
15 country of the Organization for Economic Co-operation and
16 Development having a sovereign rating in one of the top two
17 generic lettered rating classifications by a securities rating agency
18 acceptable to the commissioner, provided that the utility or utility
19 property or the usage fees or other similar utility rates or charges
20 are subject to regulation or oversight by a governmental entity.

21 SEC. 18. Chapter 2 (commencing with Section 12420) of Part
22 6 of Division 2 of the Insurance Code is repealed.

23 SEC. 19. Section 12961 of the Insurance Code is repealed.

24 ~~12961. (a) The commissioner shall provide to the Governor,~~
25 ~~the Legislature, and to the committees of the Senate and Assembly~~
26 ~~having jurisdiction over insurance an analysis of the following~~
27 ~~types of actions in the annual report submitted pursuant to Section~~
28 ~~12922:~~

- 29 ~~(1) Medical malpractice actions.~~
30 ~~(2) Toxic substance tort actions.~~
31 ~~(3) Product and design liability actions.~~
32 ~~(4) Tort actions in which a public entity is a defendant.~~
33 ~~(5) Tort actions involving judgments or settlements of one~~
34 ~~million dollars (\$1,000,000) or more.~~
35 ~~(6) Class action tort actions.~~
36 ~~(7) Defamation and invasion of privacy actions.~~
37 ~~(8) Other categories of tort actions involving commercial~~
38 ~~liability claims as the commissioner deems necessary.~~

1 ~~(b) The study may exclude actions in which the only defendant~~
2 ~~is an individual sued in his or her private capacity. The study may~~
3 ~~exclude limited civil cases.~~

4 ~~(c) If any of the information required to be provided by the~~
5 ~~parties is confidential under any other provision of law or pursuant~~
6 ~~to any court order, the commissioner shall keep that information~~
7 ~~confidential and shall limit its analysis of that information to~~
8 ~~aggregate data or other analyses which will not reveal the identity~~
9 ~~of the parties.~~

10 SEC. 20. Section 12962 of the Insurance Code is amended to
11 read:

12 12962. The commissioner shall report to the Governor, the
13 Legislature, and to the committees of the Senate and Assembly
14 having jurisdiction over insurance all of the following in the annual
15 report submitted pursuant to Section 12922:

16 (a) An analysis of the information required by Sections 674.5,
17 1857.7, 1857.9, ~~1864~~, and 12963, including, but not limited to, all
18 of the following:

19 (1) An aggregate and an average for all insurers for each item
20 of information required by these sections.

21 (2) The number of insurers reporting policies written for each
22 class during the calendar year.

23 (3) For each class, the number of insurers reporting a combined
24 loss ratio of 100 percent or more, and the number reporting a
25 combined loss ratio of under 100 percent.

26 (4) An analysis of adjustments made to loss reserves for prior
27 years.

28 (5) The change in any item required to be included by
29 paragraphs (1) to (4), inclusive, from the immediately prior year.

30 (b) An analysis of the activities of the ~~Department of Insurance~~
31 *department* in implementing the provisions of Proposition 103 on
32 the November 8, 1988, general election ballot, as set forth in Article
33 10 (commencing with Section 1861.01) of Chapter 9 of Part 2 of
34 Division 1.

35 (c) Recommendations and proposals, including suggested
36 legislation, to protect consumers from arbitrary insurance rates
37 and practices, to encourage a competitive insurance marketplace,
38 to provide for an accountable ~~Insurance Commissioner~~
39 *commissioner*, and to ensure that insurance is fair, available, and
40 affordable for all Californians.

- 1 (d) The requirements of this section shall be satisfied if the
- 2 analysis required by this section is included in the annual report
- 3 to the Governor required by Section 12922, and a copy of that
- 4 report is provided to the Legislature.